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FILED
JUL -3 2018
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)	Case No. 17-26013-B-7
)	
DIANA EVANS,)	DC No. UST-1
)	
)	
Debtor(s).)	

MEMORANDUM DECISION

Introduction

The United States trustee moves, pursuant to Federal Rule of Bankruptcy Procedure 9011 and the court's inherent authority, to impose sanctions of \$1,000.00 against Jonathan D. Matthews, attorney for debtor Diane Evans, for filing the petition in this bankruptcy case as part of a scheme to improperly delay the debtor's lenders and the lenders of other debtors that Mr. Matthews represented in the Eastern, Northern, and Southern Districts of California. Mr. Matthews filed a declaration in response to the motion.

A hearing on the United States trustee's motion was held on June 26, 2018. Appearances were noted on the record. This memorandum constitutes the court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a) applicable by Federal Rules of Bankruptcy Procedure 7052 and 9014.

For the reasons explained below, the court concludes that sanctions are warranted.

1 Findings of Fact

2 Mr. Matthews filed this case, originally as a Chapter 13
3 case, on September 19, 2017.¹ This case was converted from a
4 Chapter 13 case to a Chapter 7 case on February 9, 2018, based on
5 the debtor's failure to prosecute the case after the court
6 sustained the Chapter 13 trustee's objection to the debtor's plan
7 and for the debtor's failure to make plan payments both resulting
8 in unreasonable delay prejudicial to creditors.

9 With her petition in this case, the debtor filed a Schedule
10 A/B and an "Attachment". The Schedule and Attachment were not
11 verified and they did not contain an unsworn declaration per 28
12 U.S.C. § 1746.

13 In her Schedules and Attachment, the debtor claimed an
14 interest in the following properties:

- 15 (1) 707 Daniels Avenue, Vallejo, California, Fee
16 Simple (debtor lived here per her petition);
17 (2) 145 Duane Lane, Martinez, California (10%
18 interest);
19 (3) 624 E Street, Martinez, California (10% interest);
20 (4) 433 Thistle Circle, Martinez, California (10%
21 interest); and
22 (5) 320 South Orange, Turlock, California (10%

23 ¹This is the debtor's third non-productive bankruptcy case.
24 Prior to filing this case, on February 23, 2015, the debtor
25 filed, also in the Eastern District, case no. 15-21350, which was
26 dismissed on July 8, 2015, based on the debtor's failure to
27 appear at the § 341 meeting and provide the Chapter 13 trustee
28 with tax returns and payment advices. The debtor also filed case
no. 15-27853 on October 7, 2015, which again was dismissed on
January 22, 2016, based on the debtor's failure to appear at the
§ 341 meeting and provide tax returns. The debtor filed both
cases pro se.

1 interest).

2 The debtor apparently also held an interest in the following
3 properties which did not appear to be scheduled:

4 (1) 2219 Scenic Avenue, Martinez, California (interest not
5 stated); and

6 (2) 7609 Seattle Drive, La Mesa, California (10% interest).

7 During the course of this case, several secured creditors
8 moved, under § 362(d)(4), for relief from the automatic stay of §
9 362(a). These include:

10 (1) On November 10, 2017, U.S. Bank filed a motion for
11 relief from the automatic stay for the property at 433
12 Thistle Circle. That motion was granted on January 12,
13 2018, and in granting that motion the court made the
14 following findings of fact and conclusions of law:

15 It appears that the Debtor was part of a
16 greater scheme to thwart Movant from
17 foreclosing on the Property located at 433
18 Thistle Circle, Martinez, California.
19 Noteworthy is the fact that Debtor is
20 associated with the many individuals who
21 engaged in the intricate scheme to delay,
22 hinder, or defraud creditor Wells Fargo Bank,
23 N.A. from foreclosing on a different property
24 in the Virgil Leroy Evans bankruptcy. See
25 case no. 17-23313, dkt. 53.

26 Here, eight individuals have obtained an
27 interest in the Property at varying times
28 without Movant's knowledge or consent. These
individuals are Karen Nierhake, Carl
Gonsalves, Terese M. Robinson, Diana Evans,
Paul Reeder, Deon Booker, Virgil Leroy Evans,
Wesley Earl Stetenfeld. All but one have
filed for bankruptcy, with many filing
multiple bankruptcies and none receiving a
discharge. Indeed, the majority were
dismissed for failure to file information,
failure to appear, and failure to make plan
payments, and two were dismissed for abuse.
See Terese M. Robinson, Northern District of
California (Santa Rosa), case no. 14-11610;
Paul Lawrence Reeder, Southern District of
California (San Diego), case no. 17-00136.

From 25 separate bankruptcy proceedings that

1 have spanned eight years and three districts
2 in California, the court finds that the
3 filing of these bankruptcies prevented Movant
4 from foreclosing on its Property. The
5 Property has passed through multiple parties,
6 including the Debtor, and these parties filed
7 for bankruptcy and all of their cases were
8 dismissed. Since the Debtor was part of a
9 greater scheme to delay, hinder, or defraud
10 the Movant, the court is not persuaded that
11 the Debtor has filed this bankruptcy petition
12 in good faith.

13 Dkt 84.

14 (2) On March 27, 2018, The Bank of New York Mellon
15 filed a motion for relief from the automatic stay for
16 the property at 145 Duane Lane. That motion was
17 granted on May 2, 2018, and it included relief granted
18 under § 362(d)(4).

19 (3) On April 10, 2018, U.S. Bank filed a motion for
20 relief from the automatic stay for the property at 7609
21 Seattle Drive. That motion was granted on May 16,
22 2018, and, again, relief was granted under § 362(d)(4).

23 (4) On April 17, 2018, Wilmington Trust filed a motion
24 for relief from the automatic stay for the property
25 located at 2219 Scenic Avenue. That motion was granted
26 on May 16, 2018, and, again, it included relief under §
27 362(d)(4).

28 None of the above-referenced orders granting relief under §
362(d)(4) - or their supporting findings of fact and conclusions
of law - were appealed. There were no requests for
reconsideration of any of those orders.

On June 7, 2018, the court dismissed this case "with
prejudice" with the "with prejudice" being a bar to the filing of
any single or joint bankruptcy case by the debtor for a period of
one year. In dismissing this case with prejudice, the court
found and concluded:

A dismissal with prejudice is appropriate here. The
earlier determination in this case that the debtor
engaged in a scheme to delay, hinder, or defraud a
secured creditor and that she did not file the petition

in this case in good faith and the debtor's history of repeatedly filing non-productive bankruptcy cases is bad faith conduct, a manipulation of the Bankruptcy Code, and the filing of bankruptcy cases in an inequitable manner and for an improper purpose. Therefore, cause for dismissal with prejudice exists.

Dkt 186 at 3:4-12.

The "with prejudice" dismissal order was not appealed. There also was no timely request for reconsideration of that order.

The interests that the debtor claimed in the above-referenced properties were also claimed by other debtors in the following bankruptcy cases:

707 Daniels Avenue, Vallejo

District	Case No.	Case Name	File Date	Interest	Exhibit
NDCA	17-40553	Nuezca, Samuel	2/28/2017	10%	4, 5, 6
EDCA	17-23313	Evans, Virgil	5/16/2017	Fee Simple	7, 8, 9
SDCA	18-00074	Reeder, Paul	1/9/2018	10%	10, 11, 12
EDCA	18-22102	Evans, Virgil	4/7/2018	Fee Simple	13, 14, 15

145 Duane Lane, Martinez

District	Case No.	Case Name	File Date	Interest	Exhibit
NDCA	17-40553	Nuezca, Samuel	2/28/2017	10%	4, 5, 6
NDCA	17-41543	Fischer, Charles	6/13/2017	10%	18, 19, 20
SDCA	18-00074	Reeder, Paul	1/9/2018	10%	10, 11, 12
EDCA	18-22102	Evans, Virgil	4/7/2018	10%	13, 14, 15

624 E Street, Martinez

District	Case No.	Case Name	File Date	Interest	Exhibit
EDCA	17-23313	Evans, Virgil	5/16/2017	10%	7, 8, 9
NDCA	17-41543	Fischer, Charles	6/13/2017	10%	18, 19, 20
SDCA	18-00074	Reeder, Paul	1/9/2018	10%	10, 11, 12
EDCA	18-22102	Evans, Virgil	4/7/2018	10%	13, 14, 15

433 Thistle Circle, Martinez

District	Case No.	Case Name	File Date	Interest	Exhibit
SDCA	17-001362	Reeder, Paul	1/12/2017	undescrbed	34, 35, 36
EDCA	17-23313	Evans, Virgil	5/16/2017	10%	7, 8, 9

320 South Orange, Turlock

District	Case No.	Case Name	File Date	Interest	Exhibit
NDCA	17-41543	Fischer, Charles	6/13/2017	10%	18, 19, 20
SDCA	18-00074	Reeder, Paul	1/9/2018	10%	10, 11, 12

10637 Highway 1, Jenner

District	Case No.	Case Name	File Date	Interest	Exhibit
SDCA	18-00074	Reeder, Paul	1/9/2018	10%	10, 11, 12

2219 Scenic Avenue, Martinez

District	Case No.	Case Name	File Date	Interest	Exhibit
NDCA	17-41543	Fischer, Charles	6/13/2017	Fee Simple	18, 19, 20
NDCA	17-42376	Fischer, Charles	9/21/2017	Fee Simple	29, 30
SDCA	18-00074	Reeder, Paul	1/9/2018	10%	10, 11, 12
EDCA	18-22102	Evans, Virgil	4/7/2018	10%	13, 14, 15

7609 Seattle Drive, La Mesa

District	Case No.	Case Name	File Date	Interest	Exhibit
SDCA	17-00136	Reeder, Paul	1/12/2017	Tenancy	34, 35, 36
EDCA	17-23313	Evans, Virgil	5/16/2017	10%	7, 8, 9
SDCA	18-00074	Reeder, Paul	1/9/2018	Fee Simple	10, 11, 12
EDCA	18-22102	Evans, Virgil	4/7/2018	10%	13, 14, 15

Mr. Matthews confirmed during the hearing held on the United States trustee's motion that he was the attorney of record for the debtors in the above-referenced bankruptcy cases. He also stated that he represented some of the original borrowers who conveyed fractional interests to some of those debtors and that he performs all of his own work without the assistance of staff.

Like this case, each of the above-referenced bankruptcy cases were non-productive. In particular:

(1) In re Samuel Acosta Nuezca, No. 17-40553 (Bankr. N.D. Cal. 2017), was filed on February 28, 2017, and dismissed on September 20, 2017, based on a lack of activity in the case for nearly seven months.

(2) In re Charles Fischer, No. 17-41543 (Bankr. N.D. Cal. 2017), was filed June 13, 2017, and dismissed on September 22, 2017, for failure to make plan payments.

(3) In re Charles Fischer, No. 17-42376 (Bankr. N.D. Cal. 2017), was filed on September 21, 2017 (the day before Mr. Fischer's prior case was dismissed) and dismissed on October 10, 2017, for failure to timely comply with an earlier order for the debtor to provide a social security number.

1 (4) In re Paul Reeder, No. 18-00074 (Bankr. S.D. Cal.
2 2018), was filed on January 9, 2018, and dismissed
3 under § 109(g) on February 20, 2018, with a 180-day bar
to refiling based on the debtor's failure to timely
file documents.

4 (5) In re Virgil Evans, No. 18-22102 (Bankr. E.D. Cal.
5 2018), was filed on April 7, 2018. The debtor
6 requested a voluntary dismissal on May 7, 2018, which
was denied on June 18, 2018.

7 Mr. Matthews offers no reasonable explanation for his
8 conduct in this case. Mr. Matthews also fails to adequately
9 explain or justify the other bankruptcy cases that he filed in
10 other districts throughout California and in which the other
11 debtors he represented in those bankruptcy cases also claimed
12 fractionalized interests in the same property in which the debtor
in this case also claimed similar fractional interests.

13 Mr. Matthew's explanation of the Nuezca case in particular
14 is troubling and it reflects his lack of credibility with this
15 court. With regard to the Nuezca case, Mr. Matthews states that
16 the debtor "had numerous consumer debts[,] " Dkt 192 at 2:7, and
17 that the debtor "eventually had his case dismissed when he was
18 fortunately able to work out a modification for his home." Dkt
19 192 at 2:11-13. The court has reviewed the audio file of the
20 dismissal hearing held in the Nuezca case, and Mr. Matthews'
21 representation is not entirely accurate. During that hearing the
22 Chapter 13 trustee noted that the debtor had one timely-filed
23 \$481.00 claim. And Mr. Matthews also stated that the debtor had
24 not yet received a loan modification. So, in other words, the
25 debtor did not have numerous consumer debts and the case was not
26 dismissed because the debtor obtained a loan modification.
27
28

1 Conclusions of Law

2 This case, and the other bankruptcy cases that Mr. Matthews
3 filed for debtors claiming fractionalized interests in the same
4 properties in which the debtor in this case also held interests,
5 some fractionalized, reflects a remarkably consistent pattern of
6 abuse in the form of filing bankruptcy cases in bad faith and
7 without the intent to appear before the court in proper
8 prosecution of the case. Accordingly, the court concludes from
9 the record now before it, as well as the record in the other
10 cases noted hereinabove in which Mr. Matthews was counsel of
11 record for the respective debtors, that Mr. Matthews is aiding
12 debtors in an abuse of the bankruptcy process that is calculated
13 to hinder, delay, and defraud lenders in their efforts to
14 foreclose and/or exercise their rights under applicable non-
15 bankruptcy law with regard to their respective real property
16 collateral.

17 The court also concludes that Mr. Matthews' conduct is
18 tantamount to bad faith and, given the consistent pattern of it,
19 willful. That Mr. Matthews performs all his own work and that he
20 represented some of the original borrowers who conveyed
21 fractional interests to individuals who then filed bankruptcy and
22 whom Mr. Matthews also represented in their bankruptcy cases is a
23 clear indication that Mr. Matthews was aware of his conduct and
24 intended to engage in it.

25 Therefore, for the foregoing reasons, the court concludes
26 that sanctions are appropriate. See Chambers v. NASCO, Inc., 501
27 U.S. 32, 42-47 (1991); Caldwell v. Unified Capital Corp. (In re
28 Rainbow Magazine), 77 F.3d 278, 284 (9th Cir. 1996); Knupfer v.
Lindblade (In re Dyer), 322 F.3d 1178, 1196-97 (9th Cir. 2003).

1 The United States trustee has requested a monetary sanction.
2 of \$1,000.00. That request will be denied. In lieu of a
3 monetary sanction the court will bar Mr. Matthews, effective
4 August 1, 2018, from filing new bankruptcy cases or adversary
5 proceedings in the Eastern District of California until he has
6 completed ten (10) hours of continuing legal education in legal
7 ethics that the State Bar of California approves as meeting the
8 standard for California-compliant Continuing Legal Education,
9 that is taught by a provider approved by the State Bar, and that
10 is not self-study but a participatory activity for which the
11 provider verifies attendance. Proof of attendance and completion
12 shall be provided to the clerk of this court when the ten (10)
13 hours of continuing legal education has been completed.

14 A final order shall issue.

15 Dated: July 3, 2018.

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18 UNITED STATES BANKRUPTCY JUDGE
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INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Jonathan D. Matthews
13885 Doolittle Drive, #105
San Leandro Ca 94577

Allen C. Massey
501 I St #7-500
Sacramento CA 95814